

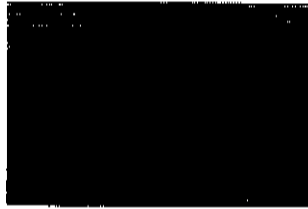
Department of the Army

Soldiers' and Civilian Employees' Guide to the Standards of Conduct

January 2006

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Required Ethics Training



The Secretary of the Army has directed that the Active, National Guard and Reserve Soldiers, and Army civilian employees will receive face-to-face ethics training. This pamphlet is to assist new entrants, Soldiers, and civilian employees in the basic rules regarding ethics. For this command, one hour briefings will be held on the following dates:

Date	Time
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Check [insert email address] for changes to schedule.

OVERVIEW OF ETHICS



In August 1992, the Office of Government Ethics (OGE) issued the Standards of Ethical Conduct for Executive Branch Employees. Built on 14 basic principles, the standards set forth rules regarding gifts between employees and the acceptance of gifts from sources outside the executive branch agency, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and engaging in outside activities. The Department of Defense issued the Joint Ethics Regulation (JER), DoD 5500.7-R, applicable throughout DoD including Department of the Army (DA) employees, effective September 30, 1993. The JER supplements the OGE Standards of Ethical Conduct for DoD and DA. In addition to these regulatory rules, many of the principles discussed in this handbook are based on statutes, some of which carry criminal penalties.

The Army General Counsel is the Designated Agency Ethics Official (DAEO); the Deputy General Counsel (Ethics and Fiscal) is the Alternate DAEO. The Chief, Army Standards of Conduct Office (DA SOCO), Office of The Judge Advocate General) has been appointed as Deputy DAEO. He has been delegated extensive authority to run the ethics program within HQDA. DA SOCO provides ethics support to Headquarters, Department of the Army in particular. In DoD, Ethics Counselors are attorneys unless there are exceptional circumstances. Every Army command, installation, and organization has assigned Ethics Counselors.



This Handbook provides a general summary of the rules. If you're unsure what you're about to do is appropriate, ask your ethics counselor. An ethics counselor will advise you on how to accomplish your goals without violating the standards of conduct. In fact, disciplinary action for violating the standards of conduct will not be taken against you if you act in good faith reliance upon the advice of your ethics counselor *and* if you have made full disclosure of the relevant circumstances. Again, if you are unsure of your actions, call your ethics counselor before you act.

WHOM TO CALL FOR ADVICE



Name
Organization
Address
telephone number
fax number
Email:

GENERAL PRINCIPLES OF PUBLIC SERVICE

DO 	NEVER 
<ul style="list-style-type: none"> • Place loyalty to the Constitution, the laws and ethical principles above private gain. • Act impartially to all groups, persons, and organizations. • Give an honest effort in the performance of your duties. • Protect and conserve Federal property. • Disclose waste, fraud, abuse, and corruption to appropriate authorities. • Fulfill in good faith your obligations as a citizen, and pay your Federal, State, and local taxes. • Comply with all laws providing equal opportunity to all persons, regardless of their race, color, religion, sex, national origin, age, or handicap. 	<ul style="list-style-type: none"> • Use nonpublic information to benefit yourself or anyone else. • Solicit or accept gifts from persons or parties that do business or seek to official action from DA, unless permitted by an exception. • Make unauthorized commitments or promises that bind the Government. • Use Federal property for unauthorized purposes. • Take jobs or hold financial interests that conflict with your government responsibilities. • Take actions that give the appearance that they are illegal or unethical.

Remember: Violating ethics principles may result in disciplinary or corrective action, including criminal prosecution. Protect yourself from disciplinary action by seeking the advice of your agency ethics official.



GIFTS



Gifts From Outside Sources

Executive branch employees, to include all Soldiers, are subject to restrictions on the gifts that they may accept from sources outside the Government. Generally, employees are prohibited from accepting gifts that are given because of their official position or that come from certain interested sources ("prohibited sources"). There are a number of exceptions to the ban on gifts from outside sources. There are also exceptions for discounts, awards and honorary degrees, certain social events, and meals, and refreshments and entertainment in foreign countries. These exceptions are subject to some limitations on their use. For example, an employee can never solicit or coerce the offering of a gift. Nor, can an employee use exceptions to accept gifts on such a frequent basis that a reasonable person would believe that the employee was using public office for private gain. Some items are treated as non-gifts and may be accepted without any limitations. If you have received a gift that you are prohibited from accepting, you may return the gift or pay its market value. If the gift is perishable and it is not practical to return it, the gift may, with approval, be given to charity or shared in the office. Regardless of any exceptions that allow accepting gifts, it is always impermissible to:

- Accept a gift, even if nominal in value, in return for being influenced in the performance of an official act. **This is a bribe!**
- Solicit or coerce the offering of a gift.
- Accept gifts from the same or different sources so frequently that a reasonable person would think you're using your office for private gain.
- Accept a gift in violation of a statute.

Rule: *You are prohibited from accepting a gift given:*

- Because of your official position, or
- By a prohibited source.

What's a Prohibited Source?

A prohibited source is any person who is, or any organization a majority of whose members are:

- Seeking official action by the Army or DoD;
- Doing or seeking to do business with the Army or DoD;
- Regulated by the Army or DoD, or
- Substantially affected by the performance of your official duties.

What's a Gift?

Anything of monetary value.



Examples

Patty, a DA employee, meets informally every week with representatives of defense contractors, who customarily treat her to a small breakfast. Although an exception might permit acceptance of these small breakfasts, Patty's recurring practice of accepting them is improper.

Joe, a computer.com representative, is seeking to do business with the Army. He invites members of the contracting office to a golf tournament, which his company will pay for. The contracting office personnel are prohibited from accepting the gift of free golf green fees because computer.com, by seeking to do business with the Army, is a prohibited source.

Non-Gifts

Examples of items that are not defined as "gifts":

- Modest items of food and refreshments (like coffee and donuts) when not served as a meal.
- Prizes in contests open to the public.
- Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, intended only for presentation. A framed print with a placard is never a gift of little intrinsic value and, therefore, is never acceptable under this example.
- Commercial discounts available to the public or to all Government civilian or military personnel.
- Anything the Government acquires by contract or otherwise legally accepts.
- Anything for which you pay market value. For tickets, this means the face value.



Gifts That You May Keep

Remember, you don't have to accept a gift. It may be smart, depending on the circumstances, to decline a gift, even when it is allowed by the exceptions below.

- Gifts valued at \$20 or less, but not cash or investment interests, and not more than \$50 in total from one source in a year.
- Gifts motivated by personal relationships.
- Certain discounts and similar benefits offered by professional organizations:

- to groups unrelated to Government employment (such as AARP);
 - to groups in which membership is related to Government employment, if the same benefits are available to other, similar organizations. (e.g.: discounted loans to Government credit union members);
 - by a non-prohibited source to any group as long as not discriminatory on basis of rank, type of responsibility, or pay.
- Gifts resulting from your or your spouse's outside business activities.

Examples

You may accept cups of coffee offered by a contractor at no charge. If you enter your business card in a drawing sponsored by an Army or DoD contractor that is open to the public, you may keep the prize. If the prize is limited to only personnel attending a particular event, regardless of the number of persons attending, you may never keep the gift, unless you pay fair market value.

On each of his quarterly visits, a sales representative of Overpriced Computers, Inc. gave MSG Topp, a company T-shirt valued at \$10 each. During that period, MSG Topp's brother Steve, who also works for Overpriced Computers, Inc., purchased for her a birthday present valued at \$60. MSG Topp may keep all of the gifts given to her. The T-Shirts don't exceed the \$50 annual limit from one source, and the gift from her brother Steve is the result of a personal, rather than a business relationship.

Tom was offered two tickets, each ticket valued at \$30.00, to a baseball game from an employee of a defense contractor. Since the price of each ticket exceeds the \$20 limit, Tom may only accept the tickets if he pays the contractor \$60, the market value of the tickets. (Paying only \$40 is impermissible.)

Other gifts that you may accept:

- Free attendance provided by a state, local government, or tax-exempt civic organization when there is a community relations interest.
- Gifts accepted under specific statutory authority, such as certain gifts from a foreign government.
- Certain educational scholarships and grants (consult your ethics official).

- Free attendance, food, and entertainment (excluding travel) when provided by a sponsor:
 - of an event on the day that you are speaking or presenting information, or
 - of a widely attended gathering, provided that your supervisor determines that your attendance is in the agency's interest. (If the sponsor has interests that may be affected by you, an additional conflict of interest determination is required.)

Remember: Your supervisor must make the determination whether you can attend. This includes invitations from all non-Federal entities.

- Free attendance, food, and entertainment (excluding travel) provided by a person other than the sponsor of a widely attended gathering, *if*
 - the market value of the gift of free attendance is \$305 or less and more than 100 persons are expected to attend, *and*
 - ***your supervisor determines*** that your attendance is in the agency's interest. (If the person has interests that may be affected by the employee, an additional conflict of interest determination is required.)

Remember: Your supervisor must make the determination whether you can attend. This includes invitations from all non-Federal entities.

- Meals, lodging, transportation, and other benefits in connection with employment discussions, if customary.
- Awards for meritorious public service or achievement, and honorary degrees, but see your ethics counselor for limitations.
- Travel benefits and free attendance from political organizations in connection with certain political activities.
- Food and entertainment (excluding travel and lodging), at social events, if: (1) the invitation is not from a prohibited source (see above for definition), and (2) the event is free to all attendees.
- Gifts of food and entertainment (not to exceed the per diem rate) at meetings or events attended in an official capacity in foreign areas,

when (1) not provided by a foreign government and (2) non-U.S. citizens participate in the meeting or event.

Examples

On account of his Army position, an arms trade association invites Jared, a DA employee, to an industry-wide, one-day seminar sponsored by the association. The value of the seminar is \$200. Jared is also invited to dinner, which costs \$100, at a restaurant after the seminar with several industry executives. Jared may accept the seminar invitation, provided that his attendance furthers Army interests, **as determined by his supervisor**. Jared is prohibited from accepting the free dinner invitation, which is separate from the seminar and is closed to other interested participants.

A veterans' service organization holds an annual dinner, which costs \$125 per person. Representatives from veterans' groups, Congress, and the media will attend. Big Business, Inc. gives several Soldiers and DA civilian employees free tickets. At the dinner, a veteran will be honored. Since it is a widely attended gathering, the Soldiers DA civilian employees may be able to accept the free tickets if his or her ethics counselor determines more than 100 persons are expected to attend the event, **and** there is an Army interest in the Soldiers' employees' attendance, as determined by their supervisors.

Disposition of Improper Gifts

Rule: If you are offered a gift that you are prohibited from accepting, you should:

- Decline the gift;
- Return the gift, or
- Pay the donor the gift's market value. For tickets that is the face amount.

Under certain circumstances, perishable items may be:

- Donated to charity
- Destroyed
- Shared within the office (check with your ethics officials).

NOTE: Subsequent reciprocity is not a solution!



GIFTS BETWEEN EMPLOYEES



Rule: You may never accept a gift from an employee who earns less than you (unless you have a personal relationship with the employee, and you are not in the chain of command).

Rule: You may not give, make a donation toward, or solicit a gift for someone superior to you in the chain of command.

Exceptions to the Rule:

- On an occasional basis, such as holidays or birthdays, you may give to a superior or receive from a subordinate:
 - Non-monetary gifts of up to \$10.
 - Personal hospitality provided at a residence (or an appropriate host/hostess gift).
 - Food or refreshments shared in the office.
- On special, infrequent occasions, of personal significance, such as marriage, illness, or birth or adoption of a child or occasions that terminate the chain of command, such as retirement; resignation, or transfer you may:
 - Solicit voluntary contributions up to \$ 10/person for a group gift to give an appropriate gift to a superior.
 - Accept appropriate gifts and group gifts that do not exceed \$300 from subordinates. *(There are other specific rules concerning these gifts, so see your ethics counselor for these rules.)*

Examples

Bill asks his 4 co-workers each to pitch in \$20 to purchase a \$100 golf putter for COL Holiday, their boss, for Christmas. Bill is prohibited from soliciting, and he and his co-workers are prohibited from giving their boss a group gift or individual gifts at Christmas that exceed \$10.

COL Holiday invites the office to a New Year's party, serving meals valued at \$25. Bill brings a \$20 bottle of wine. The dinner and the wine are both appropriate.

COL Holiday decides to retire. Bill who works for COL Holiday, gives him a \$20 book and again solicits for a going-away gift. He would like to get COL Holiday a golf-related desk set that costs about \$50. Bill may give the \$20 book, as it is an appropriate gift. Bill may solicit for a gift and contribute toward the group gift. Bill has learned his lesson and does not suggest an amount to contribute.

CONFLICTS OF INTEREST



Conflicting Financial Interests

Criminal Rule: You may not do government work on a particular matter that will affect the financial interest of:

- You
- Your spouse
- Your minor children
- Your general partner
- Organizations with which you're negotiating or have arrangements for future employment, or
- Any organization for which you serve as an employee, officer, director, trustee, or general partner.

If you think you may have a conflicting financial interest, consult your ethics counselor immediately to determine the appropriate remedy.

Example

Bryan, an Army contracting officer, is about to award a contract for new computers. His wife, Joan, owns a computer sales business, which has a bid on the contract. Bryan may not participate in the contract award decision, since the decision will affect his wife's financial interests.

Bribery and Graft

Rule: You may never seek or accept anything of value, other than your salary, for being influenced in your official duties.

Commercial Dealings Between DoD Employees

Rule: You may never knowingly solicit or make solicited sales to personnel who are junior in rank, grade, or position, or to their family members. This includes insurance, stocks, real estate, cosmetics, household supplies, cookies, candy, magazine subscriptions, and other such goods and services. ***Posting a sign up sheet in the work area is prohibited.***

Example

CPT Mary Kay Avon operates a cosmetics sales business out of her home after hours. During the day she is a company commander. She is prohibited from soliciting sales from her subordinates on the job or after work by calling them at home.

Representation of Others in Matters Affecting the Government

Rule: Generally, you are prohibited from representing anyone outside the Government before a Federal agency or court, or sharing in any compensation for such representations made by anyone else if the Government is involved in a particular matter. There are limited exceptions and special exceptions for consultants. Check with your ethics counselor.

Supplementation of Federal Salary

Rule: You are prohibited from accepting compensation from any source except the Government for your services as a Government employee.

This rule does not apply, if:

- you are a "special Government employee" - i.e., a consultant, or
- you serve without compensation, or
- your supplementation is a result of a public service award.

IMPARTIALITY IN PERFORMING OFFICIAL DUTIES



Rule: Maintain your impartiality. **Don't** participate in any particular Army matter if:

- The matter is likely to affect the financial interest of a member of your household, or a person with whom you have a "covered relationship" is involved in the matter, **and**
- A reasonable person with knowledge of the relevant facts could question your impartiality.

A covered relationship is:

- A member of your household or a relative with whom you're close,
- Someone with whom you have or seek to have a business relationship, other than a routine consumer transaction,
- An organization (other than a political party) in which you actively participate,
- Someone with whom you had, within the last year, a close business relationship, such as partnership or employment, or
- Someone with whom your spouse, parent, or dependent child has (or seeks to have) a close business relationship, such as partnership or employment.

Example

Mr. New, a senior VP from Blatz Corp. recently resigned from Blatz to become a senior official in DA. Shortly after his arrival at DA, Mr. New's office is tasked to decide whether or not to renew Blatz's contract with DA. Because Blatz employed Mr. New within the last year, he may not make the decision.

MISUSE OF POSITION (to include endorsements)



Rule: You may not use, or permit the use of, your Government position, title, or any authority associated with your office to induce or coerce another person to provide any benefit to you or anyone with whom you are affiliated:

- To imply that DoD or the Government endorses personal activities;
- To endorse any product, service, or enterprise, except as provided by statute or regulation.

Example

General Degree, the commanding general, has been asked by his college to serve on the Alumni Association. He may serve in his personal capacity, but may not allow his position as commanding general, to be used on the college letterhead or other promotional literature.

USE OF GOVERNMENT RESOURCES



Rule: Use Federal Government equipment and property, including communications systems, only for official purposes or authorized purposes as approved by your supervisor.

Rule: Use official time in an honest effort to perform official duties, and don't ask subordinates to perform tasks outside their official duties.

FUNDRAISING



Rule: You may raise funds for organizations in your personal capacity, but you may not use your official title, position, or authority to fundraise, nor may you solicit subordinates or prohibited sources. There are some limited exceptions to the rule. **ASK your ethics counselor.**

Example

Oscar, who is the deputy director for an Army office, is in charge of raising funds for his son's Little League team. Oscar may not solicit his subordinates to contribute, nor may he post a sign in the work area.

TEACHING, SPEAKING, AND WRITING



Rule: You may accept payment for teaching, speaking, or writing that is *unrelated* your official duties

Note: If your employment by DA is identified, you must make a disclaimer.

Example

Joe, an ethics attorney at DA, has been offered \$1500 to teach a 1-day course on Federal ethics to employees at Big Contractor, Inc. Because the topic relates to his official duties, he may not accept the compensation.

OUTSIDE ACTIVITIES



Rule: If you file a financial disclosure report, you need your supervisor's prior written approval before you engage in any business activity or employment with an Army or DoD "prohibited source" (see page 8). Presidential appointees and certain non career employees have additional restrictions - consult your ethics counselor.

Rule: You may not have outside employment or activities that would materially impair your ability to perform your duties.

Example

Jill, who tests new computers for the office, wants to work on weekends for the vendors of those computers. Since her outside employment would cause a conflict of interest with her Government duties, she should not accept the job.

POLITICAL ACTIVITIES

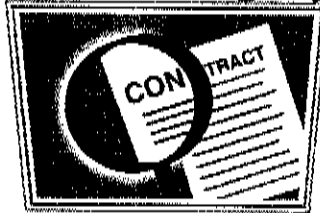


Rule: Most Federal civilian employees may actively participate in political campaigns and other partisan activities, but are prohibited from engaging in such activities on duty, or in any Federal workplace, vehicle, or while in uniform.

Although the Hatch Act loosened restrictions on political activity for most Federal civilian employees, Federal laws still limit the political activities of military personnel, law enforcement, national security, and career Senior Executive Service (SES) employees. DoD policy places additional restrictions.

Note: If you plan to engage in any partisan political activity, you should consult your ethics counselor.

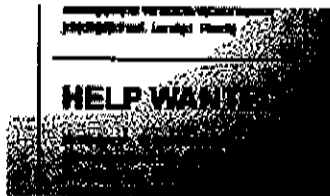
Procurement Integrity Issues



Rule: The Procurement Integrity Act and implementing regulations prohibit certain activities by personnel involved in the procurement process and govern the manner in which government and contractor personnel conduct business with each other.

In addition to the annual face-to-face training, acquisition personnel are required to have another hour of face-to-face training, which is tailored to acquisition ethics. Personnel in the acquisition process should contact their ethics counselor for further information.

EMPLOYMENT ISSUES



Seeking Employment

Rule: If you are seeking non-Federal employment (e.g., sending resumes to select employers), you are prohibited from performing Government work on a particular matter that will affect the financial interests of any of your prospective employers. You must give a written disqualification statement to your supervisor.

Example

Joey, a procurement specialist, is doing work as a Government employee on a contract worth \$500,000. The contractor offers her an interview for a job. Unless Joey turns down the job immediately, she must disqualify or recuse herself in writing and inform her supervisor and ethics counselor.

Post-Government Employment

Rule: Always consult your ethics counselor before separating from the Government. He or she will advise you on the restrictions that will apply to your activities in the private sector in light of your specific duties and level of responsibility as a Government employee.

Official Travel Benefits



Rule: Attendance at private organization sponsored events in an official capacity must comply with both statutory and regulatory requirements. A private organization may offer to pay for travel or travel related benefits of employees. This includes the offer of free travel, such as airfare, lodging, and meals. Also complimentary offers are included. Such offers may be accepted on behalf of the Army in accordance with Title 31 United States Code, Section 1353, and prior the travel. The command's or organization's ethics counsel *must* concur with the acceptance of the offered benefits.

18 August 1997

MEMORANDUM FOR GENERAL COUNSELS OF THE MILITARY DEPARTMENTS
JUDGE ADVOCATES GENERAL OF THE MILITARY
DEPARTMENTS

GENERAL COUNSELS OF THE DEFENSE AGENCIES
COUNSEL FOR THE COMMANDANT OF THE MARINE CORPS
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE
MARINE CORPS
LEGAL COUNSEL TO THE CHAIRMAN OF THE JOINT CHIEFS
OF STAFF

SUBJECT: Guidance on Analyzing Invitations to DoD Officials To Participate in Fundraising Activities and to Accept Gifts Related to Events

DoD officials often receive invitations from various organizations requesting their participation in certain events, such as serving as chairs or honorary chairs, attending, or making speeches. These invitations are further complicated when the events are designed to raise funds on behalf of the organization or to benefit a charitable entity. This memorandum provides guidance on analyzing those invitations under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the Joint Ethics Regulation (JER), DoD 5500.7-R. It also discusses the rules governing the acceptance of free attendance at events for which there are normally charges.

Official Capacity

Under 5 C.F.R. . 2635.808, a DoD official, unless authorized, may not ☐ participate in fundraising in an official capacity. ☐ Fundraising includes ☐ active and visible participation in the promotion, production, or presentation of ☐ an event at which any portion of the cost may be taken as a charitable tax deduction. Participation includes serving as an honorary chairperson, sitting at a head table, or standing in a reception line. In accordance with Section 3-210 of the JER, a DoD official may not ☐ officially endorse or appear to endorse ☐ fundraising for any non-Federal organization, with certain specified exceptions. Under Section 3-209 of the JER, DoD officials may not officially state or imply, or use their titles or positions to suggest, an official endorsement or preferential treatment of any non-Federal organization or event, with the exception of those in section 3-210: Combined Federal Campaign; emergency and disaster appeals approved by the Office of Personnel Management; Army Emergency Relief; Navy-Marine Corps Relief Society; Air Force Assistance Fund; and ☐ other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members of their dependents when approved by the head of the DoD Component command or organization. ☐

Under these regulations, a DoD official should decline an invitation to serve, in his official capacity, as the chairperson or honorary chairperson of a fundraising event for an organization that is not authorized under Section 3-210 of the JER. Serving in such a position clearly constitutes fundraising, which is not allowed under the regulations. These invitations seek the visibility of the DoD official and his name to help solicit attendance and money for the event. Participating under these circumstances would also constitute an unauthorized endorsement of the organization's fundraising.

There are only two exceptions under which a DoD employee could be associated with a fundraising event in her official capacity. First, under 5 C.F.R. . 2635.808(a)(2), an employee may merely attend a fundraising event as long as the organization does not use the fact of her attendance to promote the event.

Second, under 5 C.F.R. . 2635.808(a)(2) & (3), an employee may deliver an official speech, which is one given in an official capacity on a subject matter that relates to her official duties. This may include the employee's own official duties; the responsibilities, programs, or operations of the agency; or matters of Administration policy on which the employee is authorized to speak. The employee may not request donations or any other support for the

organization. Further, the employee's agency must first determine that the event provides an appropriate forum for the dissemination of the information.

DoD allows the heads of DoD Component commands or organizations to make that determination. Section 3-211 of the JER and DoD Directive 5410.18 set out the conditions under which they may make that determination. All of the conditions of section 3-211 must be met before DoD may provide a speaker. It is DoD policy that official speeches at fundraisers are generally disfavored, but may be given if a more appropriate forum is not available and the DoD information needs to be disseminated within a certain time period. The emphasis is whether DoD needs to meet certain public affairs goals and whether the forum in question is the most appropriate to accomplish those goals. A review of the conditions follows.

The speech and its preparation may not interfere with the performance of official duties or detract from readiness. DoD community relations or other legitimate DoD public affairs interests must be served by the speech. These include increasing understanding of U.S. defense posture and capabilities, fostering and sustaining good relations with elements of the public, increasing public awareness and understanding of the Military Services, and supporting the personnel recruiting of the Services. The event must also be of interest and benefit to the local civilian community as well as DoD.

The organization and the event must be appropriate for association with DoD and the speech. For example, nonpartisan events open to the public are usually of common interest and benefit to the general public. Events attended only by invitation, however, may be considered only where a broad cross section of the community is represented, such as an annual convention of an association, or where the organization is particularly connected with the DoD. If organizations have a narrow membership base or interest, the DoD support must benefit the community, not the sponsoring organization.

The deciding official must also be able and willing to provide the same support to comparable events sponsored by similar organizations. For example, if the Secretary of a Military Department determines that a fundraising annual dinner of a public policy organization with a conservative approach is appropriate for him to make an official speech, then he must be willing to make an official speech at a fundraising annual dinner of a public policy organization with a liberal approach. The same support is not provided if a lower-level official makes a speech at the second event. There are many civic, social, and fraternal organizations, including thirteen organizations that are listed at 32 U.S.C. § 508, that may be considered similar organizations.

DoD should not provide a speaker at an event that charges a fee in excess of the reasonable costs of sponsoring the event. This limitation applies to commercial activities making a profit and fundraising activities. The only exception to speaking at a profit-making or fundraising event is if DoD support is incidental to the event, in accordance with public affairs guidance. For example, if the event is an annual dinner, which is going to be held with or without a DoD speaker, then DoD support is probably incidental to the event. DoD participation must be carefully evaluated on a case-by-case basis.

Whenever the head of a DoD Component command or organization determines that a fundraising event is an appropriate forum, certain precautions must be taken to prevent the appearance that an official's participation is an endorsement of the fundraising event. First, the official may not request donations or other support for the sponsoring organization. Second, his attendance may not be used for promotion of the event. Therefore, any sponsoring organization should be advised that the official may not appear to endorse the organization or its fundraising activities. The organization may certainly include in its invitation package the fact that the DoD official will make an official speech, but must be careful not to use that fact to promote attendance. DoD Public Affairs offices, in consultation with Ethics Counselors, should try to advise on appropriate language and request the opportunity to review and comment on the wording.

As an example of applying the analysis discussed above, to accept an invitation to speak at the Mom, Apple Pie, and DoD Supporter (MAPADS) annual dinner fundraiser, the head of a DoD Component command or organization must make the following determinations. First, she must determine that there are specific DoD community relations interests that may be satisfied by a speech to the MAPADS. Second, because the event is attended by invitation, she must determine whether the MAPADS attendance represents a sufficiently broad cross section of its representative interest group. Alternatively, she may determine that the MAPADS is particularly

connected with a message that DoD needs to convey. DoD must also determine that other appropriate fora, which do not involve fundraising, are not available at the time. Third, she must determine that she is willing and able to address the annual dinner fundraiser of a similar organization that does not actively support DoD. The point here is that DoD may not give or appear to give preferential treatment to any particular type of group. Finally, she must determine that the presence of DoD, or the presence of a specific DoD speaker, is not one of the primary attractions of the event. In other words, should DoD presence, or the presence of a specific speaker, be canceled, the event will continue. If this determination is made, then any speech by a DoD official would be incidental to the event. If all these determinations are made, the precautions discussed on page 3 must be observed.

Personal Capacity

There is also a question of whether very senior officials may endorse, fundraise for, or assist an organization in their personal capacities. These officials are the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the Military Departments, and the Chairman and members of the Joint Chiefs of Staff. In 1992, the Standards of Ethical Conduct for Employees of the Executive Branch were published. It was the Office of Government Ethics' (OGE's) determination that it is theoretically possible for senior officials to have a personal capacity. It is DoD's position that, for these officials, the capacity is minimal, especially in the area of fundraising, and should be used only on rare occasions.

The determination of personal capacity would depend on the specific circumstances, including the office of the employee, how much the public identifies the employee with his office, the notoriety of the employee, and past history of association between the employee in his personal capacity and the organization. If the official previously supported something in his personal capacity, it would probably be permissible to continue the personal support. For example, if he had supported his local animal shelter in his personal capacity for the past 10 years, he could probably continue to offer the same type of support in his personal capacity. However, if he now receives for the first time a request from a national humane society for his support, he does not have the kind of historical relationship that could support a personal capacity. Thus, fundraising in a personal capacity would be precluded.

Accordingly, attempting to serve as Honorary Chairperson of the annual fundraising dinner of a national humane society in a personal capacity would be impermissible. Under circumstances where there is no history of a strong association in a personal capacity and where a public organization is requesting support at a highly visible forum, it is virtually impossible to avoid the appearance or implication of an official endorsement. Therefore, we recommend that a DoD official not accept such an offer in his personal capacity.

If he were to do so, however, there are other restrictions that must be observed. Under the OGE standards, at 5 C.F.R. , 2635.808(c), the DoD official may not personally solicit from subordinates. He may also not personally solicit from a prohibited source, which includes, at a minimum, every contractor listed on the DoD Contractors List for the most recent fiscal year. Personal solicitation includes using, or letting others use, his name in correspondence. It does not include mass-produced correspondence addressed to a group of many persons, as long as the solicitation is not targeted at subordinates or prohibited sources.

If the service requires a speech, the official could not give a speech expressing official DoD policy; however, he could use DoD speechwriters if the organization could be considered a non-profit professional association or learned society. Under section 3-300b. of the JER, administrative support services may be used in a limited manner to prepare speeches for presentation at such organizations when related to DoD functions, management or mission, DoD can derive a benefit, such as improved public confidence from the recognition, and the use does not interfere with performance of official DoD duties. If the organization is not such an association or society, DoD personnel may not be used to assist the official.

A DoD official may not use, or permit others to use, his official title or position to assist the fundraising. Terms of address, such as "The Honorable" or "General" may be used, although this use weakens the attempt to divorce the speech from the employee's official capacity. Finally, he must do everything possible to eliminate the appearance of an official endorsement.

Gifts

Another issue that may arise is whether a DoD official may accept gifts of an invitation to an event, which may include lodging, meals, and entertainment, and of any related transportation in either his official or personal capacity. Under section 3-200 of the JER, a DoD official may attend a "meeting, conference, seminar or similar event" in his official DoD capacity if his Agency Designee determines that there is a legitimate Federal Government purpose in accordance with training or gathering information of value to DoD. If that determination is made, the Federal Government may pay all related expenses. Under 31 U.S.C. § 1353, DoD may then accept travel, subsistence, and related expenses from a non-Federal source for attendance of the official at a meeting or similar function relating to his official duties. Therefore, if the official makes the determination, he may accept both gifts in his official capacity. If the gift of travel exceeds \$250, it must be reported to the Director of OGE through the DoD Component's ethics office.

Under 5 C.F.R. Part 2635, employees may not accept in their personal capacities gifts from a prohibited source or offered because of the employee's official position, unless an exception applies. Determining whether a donor is a prohibited source should be fairly easy. Determining whether the official is being offered the gifts due to his official position may be more difficult.

In a situation where the potential donor is not a prohibited source, the ethics official needs to examine closely the circumstances of the offered gift. If the official were invited for several years prior to his current official position, it would not appear likely that the invitation this year was offered because of his official position. If the official were not invited in the past, however, the gift is more likely based on his current official position. Two exceptions may apply. Under 5 C.F.R. § 2635.204(h), the official may accept food and entertainment from a non-prohibited source if no fee is charged to any person in attendance. Under 5 C.F.R. § 2635.204(b), the official may also accept a gift if it is clear that the motivation is a personal friendship rather than his position. Factors to consider are the history of the relationship and whether the friend personally pays for the gift. Where a gift is paid by an organization, however, rather than a personal friend, OGE considers that it is a business relationship, not a personal friendship, that is the primary motivation.

If you have any questions about application of this guidance to a particular situation, please contact the DoD Standards of Conduct Office at (703) 695-3422 or 697-5305.

s/s

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